

MEDIATION PROCESS

(Reprinted courtesy of Dr. Bruce McKinney from his book - MEDIATION AND CONFLICT MANAGEMENT.)

BEGINNING AND ENDING

The mediators have the responsibility for guiding the disputants through a proven method for understanding the dispute and moving the parties toward a settlement.

In the Madison Mediation Process, each session begins with an *introduction*, which includes explaining the procedures, the role of the mediator and establishing ground rules. Part two involves *defining the conflict* from their viewpoint followed by a mediator summary. Part three focuses on *solving the problems* and solutions are generated. Finally, in part four, *agreement*, is reached and the dispute is settled. Sessions usually require two to three hours to achieve a written agreement. Figure 5 represents the decisional phases of the Madison Mediation Process.

Mediation is a voluntary process that encourages persons to resolve their disputes peacefully. In contrast to the often frustrating and expensive court process which tends to polarize and intensify the issues, mediation brings persons together to work out their own solutions. They assume responsibility for arriving at an agreement that both can live with.

Trained mediators help facilitate communication between the disputing parties. The mediator is not a judge or an arbitrator who imposes a settlement after considering all the facts. He or she is not interested in determining guilt or innocence, only in helping the parties arrive at a solution where both are winners.

The following steps summarize the process in a mediation hearing:

1. **Introducing the Process**

The mediator must begin the hearing with a sense of purpose and order in an attempt to create a problem-solving mood. After personal introductions, the mediator explains what will happen in the session, so that nobody will be surprised. Ground rules are established and the role of the mediator is clarified.

2. **Defining the Conflict**

Each party is given opportunity to tell facts from their perspective without interruption. A good mediator is a careful and understanding listener. She or he encourages the parties to get all the crucial facts and feelings out in the open and attempts to focus the underlying causes of the problem. Following each person's story, the mediator asks what they would like to see happen during the session in very specific terms, and then summarizes all the key issues.

3. **Solving the Problem**

The mediator begins to focus the issues dealing with one of them at a time. She or he concentrates on areas of agreement and begins to build on them. Dialogue and cooperation between parties is encouraged. The mediator frequently summarizes and clarifies the issues, constantly looking for common ground and for offers that the parties are willing to exchange. The mediator may meet separately with each party in private discussion to consider compromise and reflect on ways to meet the needs of the other party. When neither party is willing to “give”, a reminder of the long-term costs of failing to reach an agreement may be an effective tool in problem-solving. There is no magic formula for success. It takes a lot of hard work by everyone.

4. Implementing the Agreement

If both parties feel they have won, and a solution has been reached on the crucial issues, the mediator summarizes the agreement point by point in the presence of both parties. The agreement is written out and signed by the two parties. They are responsible for living by the terms they have agreed on. The mediator will make contact several weeks later to see how the agreement is working.

EFFECTIVE LISTENING SKILLS

Better mediating skills require that the mediator accept the fact that listening is hard work. The mediator must recognize those behaviors that detract from listening effectiveness and work to change bad listening habits into good listening habits. The following listening skills will help you in mediating disputes.

Listening Skill #1:

Get yourself prepared for listening. Listening does not just happen. Listening is a conscious process that begins with our selection of information from the environment from which we will create meaning. Prior to a communication event, we should prepare ourselves by knowing what the communication goals are, and what our own responsibilities are concerning the achievement of these goals.

Listening Skill #2

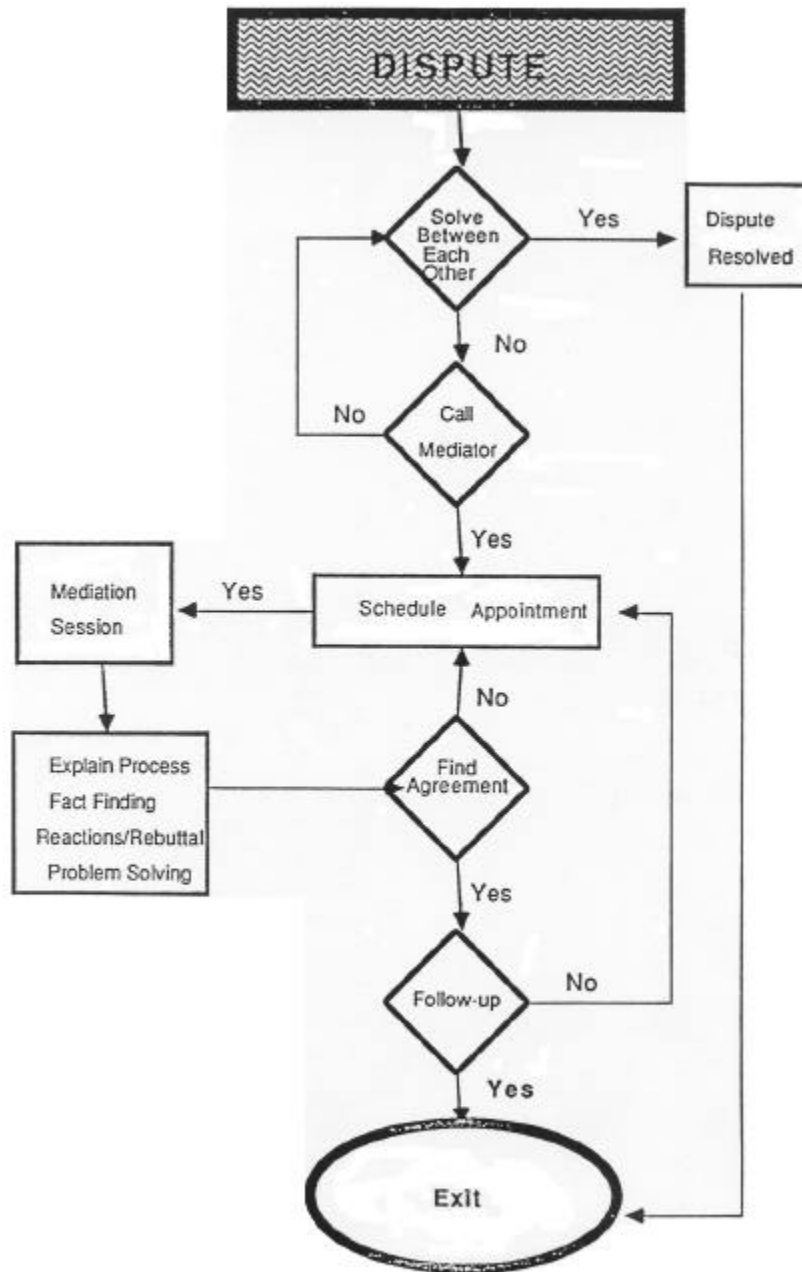
Before any decisions are made, hear the speaker out. When we begin a conversation believing that the speaker has nothing worthwhile to say, or knowing that the topic is boring and uninteresting, we guarantee failure. It is well-established that we tend to hear what we expect to hear. When we predict worthless, boring, and uninteresting content—that is usually what we get.

Listening Skills #3

Listen for ideas and concepts. Ideas and concepts are products of human thought and energy. Our listening needs to focus on ideas and concepts because they represent the thinking and creativity of the people involved. Ideas and concepts are building blocks, they stimulate growth, development, and achievement. By comparison, facts are relatively impersonal and unimportant. Ideas are fragile and tender. They can be easily overlooked, misplaced, or lost forever because nobody listened.

Listening Skill #4

Eliminate distractions and interference. As we have said, before you can listen, you have to hear. We live in a world of distractions and interference that makes hearing a major problem. Trying to carry on a conversation with an operating jack hammer in our hands would be ridiculous, and we all know better than to try. But what about the everyday noise that rattles in the background? That everyday noise we've become so accustomed to interferes with our listening without our realizing it.



Listening Skill #5

Concentrate on difficult material and identify emotional triggers. Most of us tend to prefer the path of least resistance. Easy material is almost always preferable, and we have all been known to practice procrastination and avoidance when the material is too difficult. Unfortunately, not everything can be easy. To be effective, especially in mediation and conflict resolution, we must learn to listen to complex and challenging material.

Listening Skill #6

Make use of the differential between talking speed and thinking speed. Most talking is at a rate of about 125 words per minute, sometimes more and sometimes less, but that is an average for most of us. Our brains are able to listen at a rate of about 600 to 800 word per minute. Obviously, this speed differential is the source of many bad listening habits (Nichols and Stevens, 1957). As you might guess, our brains are not willing to slow down to speech speed and trying to increase speech speed would be fruitless. The brain charges right ahead at its 800 words-per-minute speed (more or less), picking up information wherever it can. This is a reason for daydreaming. This is the basis for all those negative listening habits like short attention span, dozing, focusing on irrelevant material, and the rest.

Listening Skill #7

Learn to paraphrase accurately and naturally. Paraphrasing is not the simple parroting of the speaker's words but is rather the expression of your understanding of what the speaker has said in your own words. Paraphrasing is your attempt to mirror the meaning you understand from what the speaker had told you. This is a form of feedback, and the speaker can use your feedback message or paraphrase to check the adequacy of your understanding. If your understanding seems off target or faulty, the speaker can rephrase the message, and you will, hopefully, develop a more accurate understanding. Paraphrasing can sound contrived and forced if it is not used skillfully. You should use paraphrasing as a natural part of your conversation style and you might want to vary the ways in which you preface your paraphrasing. To begin by saying, "What I understand you to be saying is..." is perfectly acceptable but becomes cliché and boring if overused. To say, "now let me see if I've understood you." Or you might use something like, "Are you telling me..." or "Let me feedback what you have said so far." These prefacing remarks will tell the speaker that you are listening and that you are sincerely interested in developing an accurate understanding of the message (Hanna and Wilson, 1988).

Success, as a mediator, is linked to successful listening. Effective listening is an active process and is clearly a foundation skill for successful conflict resolution. Although the tangible rewards and benefits of listening may be difficult to quantify, it doesn't take much imagination to realize that effective listening will be a positive force in stimulating cooperation and positive relationships. People that are listened to grow in self concept and demonstrate a higher level of morale and motivation. With effective listening, a mediator can create a climate in which misunderstanding is reduced and confidence is

increased. This climate will serve to provide the mediator and the disputants with an environment in which everyone can interact with dignity, trust and confidence.